



CSA: EU Trading Venues with Canadian Participants Subject to Canadian Rules (Unless Exempt)

January 17, 2018

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- The Canadian Securities Administrators (CSA) have issued a Staff Notice cautioning foreign trading venues that offer access to Canadian participants to consider applicable rules in the local Canadian jurisdictions in which they are seeking to operate.
- The timing of the Staff Notice is related to the fact that, on January 3, 2018, a number of platforms in the European Union became (under [MiFID II](#)) Regulated Markets (RMs), Multilateral Trading Facilities (MTFs) or Organized Trading Facilities (OTFs) and, as such, are in a position to offer opportunities to Canadians to trade in equities and derivative instruments.
- The securities regulator of one Canadian jurisdiction, Ontario, has also issued a Staff Notice in which it asserts that EU MTFs are exchanges under Ontario securities law and discloses the terms and conditions of an interim exemption order issued to one MTF applicant (Bloomberg Trading Facility Limited).

CSA Staff Notice and Recommendations

Dated January 4, 2018, [CSA Staff Notice 21-322 Applicability of Regulation to the Operation of MTFs or OTFs in Canada](#) (the CSA Notice) makes the following observations:

- Foreign trading platforms that offer, or intend to offer, access to Canadian participants may be “carrying on business” in one or more Canadian jurisdictions.
- As a consequence, such platforms may be required under Canadian law to obtain recognition as an exchange or to register as an alternative trading system under [National Instrument 21-101 Marketplace Operation](#).
- The determination of which Canadian requirements apply turns not on their classification under European Union (EU) laws but on their characterization under local Canadian rules based on the nature and location of the services made available to Canadian participants.

The CSA recommends that “trading venues that currently provide, or want to provide, Canadian participants with access to their platform, whether directly or indirectly, contact the relevant jurisdiction(s) in which they are carrying on, or want to carry on, business to discuss the applicability of the local regulatory framework to their operations”.

OSC Staff Notice and Conditions for Exemption

On January 4, 2018, Staff of the Ontario Securities Commission (OSC) also issued [OSC Staff Notice 21-711 Multilateral Trading Facilities – Exemption from the Requirement to be Recognized as an Exchange](#) (the OSC Notice). The OSC Notice deals specifically with the EU MTFs, stating that they are considered “exchanges” under Ontario securities law, given their self-regulatory responsibilities.^[1] As such, if an MTF provides access to participants in Ontario, it is considered to be doing business in Ontario and must be recognized as an exchange or obtain an exemption from recognition.

The OSC Notice was issued in the context of an exemption application filed by Bloomberg Trading Facility Limited (Bloomberg MTF), which has been authorized by the U.K. Financial Conduct Authority (FCA) to act as the operator of an MTF for interest rate swaps, credit default swaps and other financial instruments. It states that the OSC has issued an [interim order](#) (subject to an application by Bloomberg MTF for more permanent relief) exempting Bloomberg MTF from the requirement to be recognized as an exchange under certain conditions, including the following:^[2]

- Continued registration and compliance with the ongoing requirements applicable to Bloomberg MTF as an MTF registered with the FCA;
- Restricting access to qualified participants in Ontario who are “professional clients”, as defined by the FCA, and have represented to Bloomberg MTF that they are appropriately registered, exempt or not subject to registration under Ontario securities laws;
- Providing appropriate training to Ontario users;
- Submission to the regulatory jurisdiction of the OSC and designation of an agent for service of process in Ontario;
- Prompt reporting of material actions and other events;
- Quarterly and annual reporting; and
- Information sharing requirements.

These conditions are broadly consistent with the conditions imposed by the OSC in connection with exemptions previously issued in 2016 to a number of swap execution facilities (SEFs) regulated by the United States Commodity Futures Trading Commission (CFTC) under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).

While exemptions issued by Canadian regulators are discretionary, it is reasonable to suppose that conditions similar to these would also be imposed in response to future applications by comparable entities.

^[1] In the Bloomberg MTF Order, the OSC notes that “because the MTF sets requirements for the conduct of its participants and surveils the trading activity of its participants, it is considered by the Commission to be an exchange in Ontario”.

^[2] Similar orders were previously issued to Bloomberg SEF LLC and other operators of swap execution facilities (“SEFs”) trading swaps in the U.S. and registered as SEFs with, and regulated by, the Commodity Futures Trading Commission (“CFTC”) under the U.S. Commodity Exchange Act (“CEA”).

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